IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1076 of 2007

Govindan .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District
Vellore-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenue - Rathinam, wife of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenue is a Bootlegger and she has to be detained under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the husband of the detenue has come forward with the present Habeas Corpus Petition

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seeking a writ of habeas corpus to call for the records leading to the detention of the detenue, now detained in Women Special Prison, Vellore under Tamil Nadu Act 14 of 1982 vide detention order dated 17.7.2007 on the file of the second respondent herein made in C3.Tha.Ka.Order No.57 of 2007, to quash the same and to direct the respondents herein to produce the detenue before this Court and to set her at liberty.

3.1. The order of detention dated 17.7.2007 was passed on the basis of ground case in Crime No.150 of 2007 for alleged commission of offences under Sections 4(1)(i)(aa), 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The allegation against the detenue was that on 26.6.2007 when the Sub-Inspector of Police, Sholinghur Police Station along with his police party watched Jothipuram Village, they found the detenue pouring something from black colour plastic can into a glass tumbler and tried to offer the same to a person standing in front of her, who escaped seeing the police party. The detenue was arrested and she admitted the offences committed. They seized 60 Litres of poisonous odour country arrack. The samples of arrack seized were sent for chemical analysis and the report of the Assistant Director and Assistant Chemical Examiner to Government, Regional Forensic Science Laboratory, Vellore reveals that the samples contain 6.5 mgms% w/v of Atropine per 100 ml. a poisonous substance.

3.2. Apart from the above, the detaining authority also took note of the eight adverse cases pending against the detenu, viz.,

i. Crime No.556 of 2005 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4 (1)(aaa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 4.9.2005;

ii. Crime No.664 of 2005 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 8.11.2005;

iii. Crime No.15 of 2006 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 6.1.2006;

iv. Crime No.522 of 2006 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4(1)(aa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 4.6.2006;

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v. Crime No.598 of 2006 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4 (1)(a) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 5.7.2006;

vi. Crime No.646 of 2006 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 30.7.2006;

vii. Crime No.735 of 2006 registered on the file of Sholinghur Police Station for the offence punishable under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 6.10.2006; and

viii. Crime No.787 of 2006 registered on the file of Sholinghur Police Station for the offences punishable under Sections 4(1)(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act with reference to the occurrence said to have taken place on 10.11.2006.

3.3. The detaining authority, having satisfied that the detenue is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that even though the detaining authority passed the detention order only on 17.7.2007, the sponsoring authority, even before recommending for detention, had falsely represented before the Principal Sessions Judge, Vellore in Crl.M.P.No.4900 of 2007 on 2.7.2007 itself, that the detenue is likely to be detained under Tamil Nadu Act 14 of 1982, which shows the pre-determination of mind on the part of the sponsoring authority.

6. The detention order was passed on 17.7.2007. But, the sponsoring authority, represented on 2.7.2007 before the learned Principal Sessions Judge, Vellore in Crl.M.P.No.4900 of 2007, a bail petition, that the detenue is likely to be detained under Tamil Nadu Act 14 of 1982. This, in our considered opinion, would show the pre-determination of mind on the part of the sponsoring authority. The detaining authority, while passing the order of detention, had failed to take notice of this pre-determined averment made by the sponsoring authority.

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For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 17.7.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in any other crime. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The District Magistrate
and District Collector
Vellore District
Vellore-9.

3. The Superintendent Women Special Prison,
Vellore.

4.The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras-104.

1 cc to Mr.P. Krishnan, Sr. 66611

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